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January 14, 2003

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Ms. Mary Dove, Acting Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

SENT VIA FAX

Re: Libertarian National Committee, Inc., Request for Advisory Opinion - AOR
2002 - 14

Dear Federal Election Commissioners:

I am the General Counsel of the Libertarian National Committee, Inc., the National Committee of the Libertarian Party® in the United States ("LNC"). I am writing this letter on its behalf, in response to the proposed draft Advisory Opinion 2002-14 prepared by the staff of the Federal Election Commission ("FEC"). I note the following:

1. The Libertarian Party's business activities the FEC proposes to outlaw pose absolutely no threat of corrupting the federal political process. The FEC staff's proposed advisory opinion characterizes the LNC's business activities (newsletter advertising, mailing list rental and trademark licensing) as "corrupting dangers" to the federal political process. See Page 6, Footnote 3. Nothing could be further from the truth. Since the Libertarian Party first fielded federal candidates in 1972, more than 30 years ago, no Libertarian Party candidate for federal

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office has ever won, or even come close to winning, federal office. Under these circumstances, it is ludicrous to suggest that the FEC is combating corruption by outlawing Libertarian Party activities. Almost since its inception, the LNC has engaged in these business activities, and the FEC staff has failed to cite a shred of evidence that the LNC's activities have ever had a corrupting influence on the federal political process.

The FEC staff is advancing form over substance if it suggests otherwise. The reason advertisers run ads in *LP News* is to sell goods and services, or advance their own political campaigns. The reason people rent the LNC mailing list is to sell goods and services, or advance their own political campaigns. The reason a licensee licenses the use of an LNC trademark is to help sell their goods and services. The truth of the matter is that the LNC's advertisers, mailing list renters and trademark licensees have perfectly legitimate and moral reasons to do business with the LNC, and are not seeking to influence the federal political process through disguised contributions.

The LNC proposes that the FEC consider the reality of the LNC's role in the federal political process. At least until such time as the Libertarian Party elects a federal candidate, the FEC should recognize that payments to the LNC for advertising, mailing list rental and trademark licenses are for good and sufficient non-political business purposes, and NOT for the purpose of making a disguised contribution.

2. The FEC proposes to abandon compelling long-standing precedent permitting mailing list rentals by federal political committees. In its proposed opinion, the FEC staff admits that in order to outlaw the LNC's mailing list rental activities, it must first overturn many FEC advisory opinions that specifically authorize such mailing list rentals. See Page 9, e.g., Advisory Opinion 1979-18. Yet the reasoning of those opinions is just as valid as ever. The LNC would not have developed its highly unique mailing list, but for the fact that it is essential for use in the LNC's political activities.

Even the FEC Staff admits that, given the broad description of current mailing list use provided by the LNC, only about 22% of that use is for non-Libertarian Party related purposes. The proposed opinion ignores the fact that, of that 22%, many of the list rentals are to non-profit corporations such as the Advocates for Self-Government, Inc., and the Reason Foundation. These organizations promote educational agendas that are "small l" libertarian, but do not involve participation in electoral activities. By prohibiting these organizations access to the LNC's mailing list, the FEC would be violating their First Amendment rights to seek the support of and to persuade Libertarian Party members of their causes.

All told, less than 10% of the LNC's mailing list rentals are to for-profit corporations, such as the *Washington Times* or *National Review*. These organizations rent the LNC mailing list in a search for subscribers who might appreciate their point of view on the

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issues. In point of fact, the LNC did develop and does use its mailing list primarily for its own purposes.

The LNC proposes that the FEC apply its long-standing analysis to the LNC's mailing list rentals. The FEC should find that the LNC developed and uses its mailing list primarily for the LNC's own unique political purposes, and the LNC's mailing list rentals are only incidental to that primary purpose. The LNC's mailing list rental receipts are payments received for value given, and NOT disguised contributions.

3. The LNC's trademark licensing activities are also truly incidental and isolated transactions. Contrary to the characterization of the FEC staff, the LNC only rarely licenses its trademarks for a fee. The LNC's trademarks are used tens of thousands of times every year by the LNC and its affiliate parties and candidates, gratis. By contrast, over the past 10 years the LNC has licensed its trademarks less than a dozen times. Even if the LNC expands its trademark licensing operations, as it desires to do, those operations are likely to result in only a comparatively small relative use of the trademarks for business purposes.

The LNC proposes that the FEC also apply its long-standing analysis to the LNC's trademark licensing activities. The FEC should find that the LNC developed and uses its trademarks primarily for the LNC's own unique political purposes, and the LNC's trademark licenses are only incidental to that primary purpose. The LNC's trademark licensing receipts are payments received for value given, and NOT disguised contributions.

4. The LNC's trademark licensing activities are compelled by law, if the LNC is to preserve its ownership of the marks. The only way to make sure that every T-shirt vendor does not dilute, disparage and render generic the Libertarian Party® trademark is to insist that T-shirt vendors enter into license agreements with the LNC. Such agreements require that consideration, often modest, be paid. By prohibiting the LNC from entering into trademark licensing agreements, the FEC staff proposes to strip the LNC of ownership of its trademarks.

The LNC proposes that the FEC recognize the unique legal nature of trademarks, and the resulting legal need for the LNC to engage in trademark licensing activities. The FEC should find that the LNC's trademarks are so unique that in order to preserve their use for their overtly political purposes, the LNC must be permitted to license them. As such, the LNC's trademark licensing receipts are payments received for value given, and NOT disguised contributions.

5. The FEC proposes to brand every *LP News* advertiser, LNC mailing list renter and LNC trademark licensee as a federal political committee that must comply with FEC regulations and file reports with the FEC. In its proposed FEC opinion the FEC staff suggests that any non-federal candidate purchasing an advertisement advancing the candidate's campaign

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in *LP News*: (a) must make sure that the funds used to purchase the ad are raised in accordance with FEC regulations for federal election campaigns; and (b) is engaging in federal election activity because the candidate is making a payment to the national committee of a political party. The FEC goes on to suggest that if that non-federal candidate spends \$1,000 on an *LP News* ad, then the candidate must file as a federal political committee. In doing so, the FEC staff ignores the political reality that the candidate is advancing the candidate's own non-federal campaign, NOT engaging in federal political activity.

The FEC staff also fails to explain why, if a non-federal candidate must scrupulously determine whether the funds that candidate uses to purchase an *LP News* ad came from non-corporate sources permitted by FEC regulations, the same is not true of a T-shirt vendor who places an ad in *LP News*. It follows that the T-shirt vendor must also document that none of the T-shirt vendor's advertising "contributions" were received by the T-shirt vendor from a corporation. The FEC staff never explains why, if the non-federal candidate's advertising "contributions" aggregate \$1,000, thus forcing the candidate to file as a federal political committee, this is not also true of the T-shirt vendor whose advertising "contributions" aggregate \$1,000.

The LNC proposes that the FEC consider the reality of why people buy ads in *LP News*. Just because those funds are paid to a national political party committee, those funds are NOT necessarily expended for federal political activity. Rather, the FEC should look at the ad itself, and determine from its content the purpose for which the ad was purchased. If the ad promotes the candidacy of a non-federal candidate or the sale of T-shirts by a T-shirt vendor (and not a federal political committee), then take the advertiser at the advertiser's word. Do NOT require that funds for the ad be raised in accordance with FEC regulations. Do NOT require the LNC to treat those funds as disguised contributions. Do not count those funds as funds raised for federal political activity that give rise to an obligation to file as a federal political committee with the FEC if they total \$1,000.

Respectfully submitted,



William W. Hall

WWH/md

Cc: Mr. Geoffrey Neale, Chair, LNC
Office of General Counsel, FEC

03-0216-1